19 48 **File No.** O Drugs/48

Legal DEPARTMENT

A BRANCH

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Opinions under the Drugs Act, 1940

File No. O Drugs /48

Std. Sectt. Slip 24-B

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2. It has come to the notice of Government that certain dealers in drugs charge ten to twelve times of the ceiling retails prices fixed by the manufactures. It is proposed to enforce the ceiling retail prices fixed by the manufacturers. D.S. H.& L.G.D. in his note (approved by H.M. H.&.LG.D. on pages 6-7 ante observes as follows.

"Although the preamble of the Drugs Act, 1940, states that it has been enacted with a view to regulating the import into, and the manufacture, distribution and sale, in British India of drugs", I am doubtful whether it would be legal to impose a condition in the licences issued under the Drugs Rules that the licensee shall not sell any drug for a price highher than the ceiling price fixed by the manufacturers as the object of the Act and Rules issued there - under is to ensure the quality and the purity of the drugs, and it may be necessary to move the Govt. of India to amend the Act?

The H.L.A. is requested to advice on the point raised in the above note.

3. As stated in the preamble of the Drugs Act 1940 is intended to regulate import into, and the manufacture, distribution and sale in the Dominion of India of drugs and contains no provision under which the prices prices of of drugs can be regulated. It is futile to look to the Drugs Rules, 1945 for any such provision when the parent act does not deal with regulation of prices

nor can a condition be inserted in the licence (in Form 19 to the Drug Rules, 1945) to the effect that the licencee shall not sell any drug for a price higher than a ceiling price fixed by the manufacturers. This would be doing what the Act does not permit and as such would be ultra-vires, such a power would appropriately be taken to Govt. by an amendment of the Act.

Attention is however invited to section 4(1) (f) read with the Schedule I of the Bombay Essential Commodities and Casttle (Control) Act,1946 whereunder it is competent for the Provincial Government by an order to control the prices at which drugs may be bought or sold. Under this provision it would be legally fessible to fix the prices of any drug at the ceiling prices fixed by the manufacturers and it would be an offence under section 10 thereof to charge more than the prices so fixed.

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A.A.S.

The Dy. Secretary, Health & L.G. Department fefers to the preamble of the Drugs Act, 1940, and states that it is dabtful whether it would be legal to impose a condition in the licenses issued under the Drugs Rules providing that the licensee shall not sell any drug at a price higher than ceiling price fixed by the Manufacturers. R.L.A. is requested to advise whether the view of the Dy.Secy., H.&L.G.D. is correct.

The preamble of the Drugs Act, 1940, provides that it is enacted "to regulate the import into, and the manufacture, distribution and sale in, Br.India of drugs". 'Regulate' means to adjust by rule, method or established mode; to direct by rule or restriction, to subject to governing principles on laws

on laws (see P.1098 of Iyer's Law Lexicon). 'To regulate' means to fix, establish or control. Power to regulate is power to establish reasonable limitations but does not generally include power to prohibit. The power to regulate commerce, vested in congress, is the power to foster, protect and control commernce, to prescribe the rules by which it shall be governed, that is, the conditions upon which it shall be conducted, to determine when it shall be free and when subject to duties or other exactions. The power also embrances within its control all the instrumentalities by which the commerce may be carried on, and the means by which it may aided and encouraged(see P.1519 of Black's Law Dictionary). It is clear that the power to regulate implies power to control, that is, the conditions upon which it shall

M.R.D.

11/4/56

Office of the R.L.A.

Drugs Act,1940.

Bombay Drugs Rules

Whether ceiling prices of drugs can be fixed.

It is no doubt true that the preamble to the Drugs Act, 1940 speaks of regulating the import into, and the manufacture, distribution and sale in British India of drugs. Provisions for controlling the transations of sale in drugs with reference to a fixed price could thus be included within the scope of the Act. In fact, however, Chapter IV, which deals with the sale of drugs, contains no such provisions. The forms of licences for the sale of drugs are prescribed by rules which are made under sub-section(2) of section 33 in that Chapter. The expression"such rules" in sub-section (2) refers to "rules for the purpose of giving effect to the provision of this Chapter" in sub-section(1) which confers the rule making power. Inasmuch as the chapter makes no provison for the control of prices, it would not be feasible to have a system of price-control either by making a rule or by inserting conditions in the licence. For introducing any such system on the lines of the Drugs Control order, 1943, it would be necessary to amend the Act by by inserting therein suitable substantive provisions. The other alternative is to utilise the existing legislation regarding essential commodities. See Entry 4-Drugs in Schedule I and section 4(1) (f) of the Bombay Essential Commodities and Cattle (Control)Act, 1946.

Sd/-
14/12
Remembrancer of Legal Affairs.

U.R. to H.& L.G.D., No. 11868,dated the 18th December1946

M.R.D.
11/4/56